IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

MFA.No. 212 of 2000

I.C.A.10/1997 OF EMPLOYEES INSURANCE COURT, ALAPPUZHA
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APPELLANT/RESPONDENTS:

THE REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION,
TRICHUR.

BY ADV. SRI.T.P.M.IBRAHIM KHAN, SC, ESI CORPN.,

RESPONDENT/APPELLANT:

T.R. SAHADEVAN,
MEPATH HOUSE,
S.M.C - I,
CHERTHALA.P.O.,
VELORVATOM.

BY ADV. SRI.C.K.SAJEEV.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 6308/2001 IN M.F.A. NO. 212/2000

DISMISSED

SD/- J.B.KOSHY, JUDGE.

04/06/2007. **SD/- K.P.BALACHANDRAN, JUDGE.**

//TRUE COPY//

prv.

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.212 OF 2000

Dated 4th June, 2007

JUDGMENT

Koshy,J.

The respondent while working as a Weaver in the Travancore Mats and Mattings Company, Cherthala sustained an injury in the course of employment on 19.6.1995. As a result of that, he was suffering from Lumbar Spondylosis. According to him, he was having persistent low back ache and pain on the left side and he was unable to do any work involving strain. He had undergone prolonged treatment. Even now he is unable to do work everyday. Since it is piece rate work, the monthly wages is also reduced. The fact that he sustained injury in the course of employment and the Employees' State Insurance Corporation gave compensation for temporary disability is not disputed. The whole question is that whether he is entitled to the disablement benefit. The Medical Board of the Employees' State Insurance Corporation did not grant any disablement benefit as according to the Medical Board no permanent disability is found. He filed an appeal before the Employees' Insurance Court. Before the E.I. Court, apart from the examination of claimant who reiterated his contentions, also produced Ext.P2 medical certificate which was issued by the Orthopaedic Surgeon of Alappuzha Medical College Hospital.

The doctor who issued the certificate was examined as PW2. He deposed that after sustaining injury in the course of employment the respondent cannot do any strainful work and because of that respondent was advised by PW2 not to do any strainful work and if any strainful work is done, he would have to undergo a surgery. PW2 also stated that if the respondent stands for a long time, the nature of lumbar spondylosis would be aggrevated and his physical condition would become worse. PW2 also stated that he is not completely disabled and his disablement is 15%. The employer's certificate was obtained by the corporation which shows that considering the DA, daily wages has been improved. But, on most of the days in every month he was absent and it is stated by the respondent that it was due to the pain suffered by him. Considering the totality of circumstances, Tribunal accepted the certificate issued by the Orthopaedic Surgeon of Alappuzha Medical College Hospital and awarded 15% disablement benefit. The substantial question of law raised by the E.S.I. Corporation is whether E.I. Court can interfere with the opinion of the Medical Board constituted by the E.S.I. Corporation. Such a contention cannot lie. If that be so, there was no need for statutory provision to file an appeal against the opinion of the Medical Board before the E.I.

Court. The E.I. Court has considered the evidence and seen the respondent. The E.I. Court has also considered the opinion of the Medical Board as well as evidence of PW2 and fixed disablement benefit. It is mainly on a finding of fact and we see no ground to interfere with the same.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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